

REMARKS

The Amendment, filed in response to the Office Action ("Action") mailed on December 23, 2009, is believed to fully address all issues raised in the Action. Favorable reconsideration of the application is respectfully requested.

Claims Disposition and Amendment

Claims 5,6, and 8-13 are all the claims pending in the application. Claims 5, 6, and 8-13 are considered and rejected.

Upon entry of the amendment, which is respectfully requested, claims 5 and 6 will be amended to provide an antecedent basis and correct typographical errors. No new matter is introduced. As the amendments are made to correct typographical errors, it is believed that they do not necessitate new search or further consideration.

Response to Claim Objection

In the Action, claim 6 is objected to for the phrase "shortened than."

In response, claim 6 is amended to correct the phrase to read "shorter than" as suggested by the Office, rendering the objection moot. Withdrawal of the objection is respectfully requested.

Response to Claim rejections - 35 U.S.C. § 112

1. Response to Claim Rejection under 35 U.S.C. § 112, first paragraph

At page 2 of the Action, claim 13 stands rejected under 35 U.S.C. §112, first paragraph, as assertedly failing to comply with the written description requirement. The Office asserts that the limitation "reduced concentration of dissolved oxygen is maintained during fermentation" is not supported by the portions of the specification, where Applicants argued to provide support.

Applicants respectfully submit that the disclosure of the paragraph bridging pages 6 and 7 of the specification supports the above limitation. That is, the bridging paragraph contains the phrases “by carrying out fermentation at the general temperature in conditions that the dissolved oxygen concentration in the mix is reduced” and “can be achieved by carrying out fermentation at a fermentation temperature lower than general in a condition that a dissolved oxygen concentration of the mix is reduced.” Applicant note that the above descriptions in the specification are not verbatim of “reduced concentration of dissolved oxygen is maintained during fermentation.” However, they clearly describe that the fermentation is carried out under a condition that a dissolved oxygen concentration is reduced and provide support the limitation at issue.

2. Response to Claim Rejection under 35 U.S.C. § 112, second paragraph

At page 3 of the Action, claims 5-6 and 8-9 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite because the phrase “a concentration of dissolved oxygen” makes the claim indefinite.

In response, claim 1 is amended to correct “a” to read “the,” rendering the rejection moot. Accordingly, withdrawal of the rejections under 35 U.S.C. § 112 is respectfully requested.

Response to Claim rejection - 35 U.S.C. § 103

At pages 3-6 of the Action, claims 5-6 and 8-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Castberg *et al.* (US 5,453,256; hereinafter R1) in view of Kamiya (EP 1 082 907; hereinafter R2).

Both of R1 and R2 references were cited in the previous non-final Office Action. Applicants note that the Office’s asserted grounds of the rejections are substantially the same to

those provided in the previous non-final Office Action, and thus are not repeated herein for the brevity purpose.

Regarding the Applicants' arguments, which were presented in response to the previous Office Action, that one skilled in the art would not have been motivated to combine R1 with R2, the Office contends "R1 teaches certain aspects of the presently claimed invention namely the reduction of dissolved oxygen in the fermentation medium and the lowered fermentation temperature due to effect of lowered oxygen tension. Both of these aspects are being presently claimed. It is obvious to those of skill in the art that addition of carbon dioxide will result in the formation of carbonic acid which lowers the pH and could affect the taste and the texture of the gel. This would have motivated a person of skill in the art to look for some hints to replace carbon dioxide with an inert gas such as nitrogen. This is remedied by using the teachings of R2 by using nitrogen to lower the dissolved oxygen in the fermentation medium and additionally lower the dissolved oxygen in the fermentation medium to the levels set by R2."

Applicants respectfully disagree.

In R1, the number of bacteria is merely increased by an anaerobic incubation using a culture. In R1, the carbonization is conducted on a pasteurized milk.

On the contrary, in R2, the reduction of dissolved oxygen concentration is carried out on raw milk, prior to the pasteurization of milk (raw milk), for the purpose of improving flavor of the raw milk.

Therefore, since the purpose and the timing of the carbonization in R1 and those of the reduction of dissolved oxygen concentration in R2 are different, there is no motivation to combine these references and modify the combined teachings to arrive the present invention in which the reduction of the dissolved oxygen concentration is conducted after the pasteurization

of a mix of raw materials (just before the incubation). Such treatment unexpectedly improves physical properties (texture) of the resultant fermented milk, which is produced according to the claimed method.

In addition, it is expected that, if CO₂ is added into mix which contains milk, pH of the milk is lowered and protein materials contained in the milk agglutinate, resulting in the fermented product of a poor texture. Therefore, one skilled in the art would not have been motivated to combine of the teachings of R1 and R2 with a prediction that would arrive the claimed invention.

Accordingly, it is believed that the rejection is not sustainable and its withdrawal is respectfully requested.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number **202-775-7588**.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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